IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 813 of 2007(V)

PETITIONER:

V.C. KURIAKOSE, S/O.CHERIA (LATE),
AGED 71 YEARS, PRESIDENT AND MEMBER OF WARD II,
THIRUMARADY GRAMA PANCHAYATH, KOOTHATTUKULAM,
RESIDING AT VADAKKEMANDOLIL,
MANNATHOOR P.O., PAMPAKUDA.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.M.R.HARIRAJ
SMT.REKHA VASUDEVAN
SRI.SURAJ.S
SRI,P.A.KUMARAN
SMT.VINEETHA B.
SRI.K.S.SARATH KUMAR
SRI.S.NITHIN

RESPONDENTS:

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1. KERALA STATE ELECTION COMMISSION
REPRESENTED BY CHIEF ELECTORAL OFFICER,
KERALA, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF LOCAL SELF GOVERNMENT.

3. THIRUMARADY GRAMA PANCHAYATH
REPRESENTED BY SECRETARY, THIRUMARADY
GRAMA PANCHAYATH, KOOTHATTUKULAM.

4. THANKAMMA THOMAS, MEMBER,
WARD NO.X (THIRUMARADY PADY), THIRUMARADY GRAMA
PANCHAYATH, KOOTHATTUKULAM, ERNAKULAM DIST.,
RESIDING AT PALAPILLY, KAKKOOR P.O.,
KOOTHATTUKULAM.

5. GEORGE JOSEPH, MEMBER, WARD NO.III
(MANNATHOOR EAST), THIRUMARADY GRAMA
PANCHAYATH, KOOTHATTUKULAM, ERNAKULAM DISTRICT,
RESIDING AT PALLIPPATTU, MANNATHOOR P.O.,
KOOTHATTUKULAM.

6. JESSY ASHOK, MEMBER, WARD NO.XI
(KAKKOOR SOUTH), THIRUMARADY GRAMA
PANCHAYATH, KOOTHATTUKULAM, ERNAKULAM DISTRICT,
RESIDING AT AMMANKULATHIL, KAKKOOR P.O.,
KOOTHATTUKULAM.

7. SECRETARY, PAMPAKUDA BLOCK
PANCHAYATH, PAMPAKUDA, KOOTHATTUKULAM.

R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
R2 BY SR.GOVT.PLEADER SRI.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.813 OF 2007

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DATED THIS THE 10TH JANUARY, 2007

J U D G M E N T

The issue which arises in this Writ Petition is whether the 1st respondent-Kerala State Election Commission has the power to pass interim orders restraining respondents 4 to 6, Members of the 3rd respondent-Panchayat who have allegedly entailed disqualification under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (Act 11 of 1999).

2. The petitioner is the President of the 3rd respondent-Panchayat. According to him, he and respondents 4 to 6 contested the election to the Panchayat on the panel of the Left Democratic Front and got elected. Respondents 4 to 6 have given declarations stating that they are members of the LDF, as early as on 2.10.2005. Exts.P1, P2 and P3 respectively are copies of the aforesaid declarations. Of late, there has been political re-alignment and re-orientation in the State with reflections in Thirumarady Panchayat also. Due to these changes, respondents 4 to 6 along with four other Panchayat Members belonging to UDF have moved a motion for no-confidence against the petitioner on 29.12.2006. Ext.P4 is copy of the no-confidence motion which is signed by respondents 4 to 6. Pursuant to Ext.P4, Ext.P5

notice has been issued by the 7th respondent who is the officer authorised by the 1st respondent-Election Commission under Section 147(2) of the Kerala Panchayat Raj Act, 1994 to the petitioner. A meeting for considering Ext.P4 is now scheduled to 12.1.2007. Realising that respondents 4 to 6 have already defected from LDF over to the UDF, the petitioner moved Ext.P6 O.P. before the 1st respondent-Election Commission. In Ext.P6 filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 read with Rule 5 of the Kerala Local Authorities (Disqualifying Defected Members) Rules, 2000 it is prayed that a declaration be issued that the respondents therein (respondents 4 to 6 in the Writ Petition) are disqualified for being members of the 3rd respondent-Panchayat. Along with Ext.P6, the petitioner submitted Ext.P7 interlocutory application seeking a temporary injunction restraining the respondents therein from exercising their rights as members of the Panchayat and from voting at the meeting for considering the no-confidence motion against the petitioner to be held on 12.1.2007. The grievance of the petitioner is that though Exts.P6 and P7 were filed and moved on the same day, what the 1st respondent has done is to order notice on both Exts.P6 and P7 and post the I.A. for hearing on 1.2.2007. On account

of the order now passed by the 1st respondent, both Exts.P6 and P7 have been rendered infructuous. Raising various grounds, the writ petitioner prays that the order of the 1st respondent on Ext.P7 be quashed and direct the 7th respondent that respondents 4 to 6 shall not be permitted to exercise any rights as members of the 3rd respondent-Panchayat pending disposal of Exts.P6 and P7.

3. On being served with copy of this Writ Petition, Mr.Murali Purushothaman, Standing Counsel for the 1st respondent has filed a statement on behalf of that respondent. It is contended therein that the question whether the State Election Commission is vested with powers to grant interim orders under Section 36(2) of the Kerala Panchayat Raj Act in a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 is no longer res integra. Annexure-A, copy of the judgment in W.P.(C)No.37014 of 2003 and Annexure-B, copy of judgment in W.P.(C)No.2047 of 2004 are produced and relied on to substantiate the above contention. Reference is made to Section 4(3) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and it is highlighted that a member against whom proceedings are initiated by the State Election Commission shall cease to be a member only from the date of decision

of the Commission. It is contended on that basis that the legislative intention is that a person who has allegedly become disqualified on account of defection is not liable to be restrained by the Election Commission by passing interim orders till such time as the Commission takes a final decision on the issue whether he has really entailed a disqualification.

4. It was very persuasive submissions which were addressed before me by Sri.M.R.Rajendran Nair, Senior Counsel on behalf of the petitioner. The learned Senior Counsel referred to Sections 35 and 36 of the Kerala Panchayat Raj Act, 1994 and Sections 3, 4 and 5 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. According to learned counsel, the view taken by this Court in Annexures A and B judgments requires reconsideration. Citing the judgment of the Supreme Court in **I.T.Officer v. Mohd. Kunhi** (AIR 1969 SC 430), Mr.Rajendran Nair would submit that the power to pass appropriate interim orders so that the final order to be passed in the main proceedings will be effective is to be conceded to every authority exercising judicial or quasi judicial functions. Having entertained Ext.P6 and chosen not to reject it on reasons of maintainability, the 1st respondent-Election Commission was not at all justified in issuing

notice on the I.A. and posting the same to a date beyond the day the no-confidence motion is slated for consideration. Power to pass appropriate interim orders are inherent and the learned Senior Counsel would refer to Section 36(3) of the Panchayat Raj Act and submit that all the powers which are available to a civil court while trying a suit are available to the Election Commission also while trying applications in the nature of Ext.P6.

5. Sri.Murali Purushothaman, Standing Counsel for the Election Commission would resist the submissions of Sri.Rajendran Nair. According to him, there is no warrant at all for reconsidering the views expressed by this Court in Annexures A and B since they have the support of other judgments of this Court including those rendered by Division Benches. He referred me to the judgments of this Court reported in **Jose Augustine v. State of Kerala** (AIR 1999 Kerala 293) and **Nazeera v. State of Kerala** (2006 (3) KLT 272) and to my own judgment in W.P.(C)No.29888 of 2006. According to him, Ext.P7 is a premature application though it is true that the Election Commission ordered notice on the same. The learned Standing Counsel would submit that a Member can be said to have defected within the meaning of the Kerala Local Authorities (Prohibition of

Defection) Act, 1999 only when he violates the whip given by the leadership of his party to vote in a particular manner and that stage is yet to arrive. It is quite possible that respondents 4 to 6 in spite of subscribing their signatures to Ext.P4 may not vote in favour of the motion. Highlighting the language used in Section 4(3) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 learned counsel would submit that the order of disqualification is expected to take effect only from the date of the order of the Election Commission. Such an order will be passed only after adjudication of Ext.P6. The very reason as to why disqualification under Section 35(n) has been taken out of Section 36(2) which confers power on the Election Commission to pass interim orders is the introduction of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. Therefore, to accept the view that the Election Commission has the power to pass interim orders restraining a Member from discharging his rights as Member even before a declaration is made by the Election Commission will be against the legislative intendment.

6. Sri.M.R.Rajendran Nair, Senior Counsel was very persuasive in his submissions. His argument that every adjudicatory authority exercising judicial or quasi judicial functions should be conceded

inherent powers to pass appropriate interim orders lest the main proceedings before them should become infructuous was attractive and to a certain extent had the support of the principles laid down by the Supreme Court in **I.T.Officer v. Mohd. Kunhi** (AIR 1969 SC 430). But at the same time, as the learned Senior Counsel himself submitted at the very outset, the question is whether Annexures A and B judgments which seem to have been kept in mind by the Election Commission while passing order of notice only on Ext.P1 require reconsideration. The submission of Mr.Murali Purushothaman that Ext.P7 interlocutory application is premature cannot be said to be totally without force. It is too early to say that respondents 4 to 6 have already defected over to the rival group. It is quite possible that on the 12th when Ext.P4 motion is deliberated and put to vote, respondents 4 to 6 may not support the same. The view expressed by Balakrishnan Nair, J. in Annexures A and B judgments seems to be in tune with the legislative intendment. I am not persuaded to agree that Annexures A and B require reconsideration. The Election Commission could have dismissed Ext.P7 straightaway.

7. One of the reliefs sought for in the Writ Petition is that the 1st respondent should be directed to consider and pass orders on Ext.P6

within the statutory time frame. Sri.Murali Purushothaman, Standing Counsel submitted before me that the 1st respondent will dispose of Ext.P6 at its earliest without undue delay. The above submission is recorded.

The Writ Petition will stand dismissed in limine.

(PIUS C. KURIAKOSE, JUDGE)

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